

Appl. No. 10/757,629  
Atty. Docket No. 8194C  
Amdt. Dated March 21, 2006  
Reply to Office Action of 12/21/05  
Customer No. 27752

### REMARKS

Claims 1, 4-5, and 8-15 were previously pending in the present application. Claim 4 has been cancelled. New claims 16-19 have been added. Claims 1, 5, and 8-19 are now pending in the application. No additional claims fee is believed to be due.

### Telephone Interview

Applicant appreciates Examiner Hill's time and courtesy extended in conducting the telephone interview of March 21, 2006 in which Applicant and Examiner Hill discussed the pending claims in view of the prior art.

### Rejection Under 35 USC §103(a) Over Schmidt in view of Vukos

The Office Action maintains the rejection of claims 1, 4-5, and 8-10 under 35 U.S.C. 103(a) as being unpatentable over Schmidt in view of Vukos.

In particular, the Office Action now cites Schmidt at Col. 6, lines 39-43 and Col. 2, lines 1-11 (and Fig. 2) for the teaching of backing tape that is used in a surface fastening system that is able to withstand different tear and tensile forces applied across the tape in varying directions when the user moves. However, the cited passage of Schmidt at Col. 2, lines 1-11 merely states that the conventional backing tapes are not sufficiently strong to withstand the various tear and tensile forces experienced during use, and that a goal of the disclosure is to provide a tape having higher tear and tensile properties. Likewise, at Col. 6, lines 39-43 merely disclose an exemplary pressure sensitive adhesive.

However, nowhere in these cited passages does Schmidt discuss that the fastening system has different levels of resistance to disengagement in different directions. The fact that a tape is able to withstand higher tear and tensile forces than conventional tapes does not mean that it different levels of resistance to disengagement in different directions. Applicant noted in the previous response that Schmidt's "primary object" is to provide a unique, aggressively tacky pressure sensitive adhesive tape having desirable tear and tensile strength properties (col. 3, lines 4-7). Schmidt therefore discloses that tape bases having cross direction tensile strengths above 25 lbs./inch have adequate strength for use on diapers (col. 3, lines 45-48). Applicant could not identify any teaching or suggestion within Schmidt to provide a surface fastening system having different levels of resistance to disengagement in different directions.

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In response to Applicant's arguments, the outstanding Office Action states that one end of Schmidt's adhesive tape adheres firmly to the film backing of the diaper while the free end lends itself to easy disengagement from a protective cover strip.

However, claim 1 has been amended to recite that the fastening system is in an engaged configuration to fasten at least a portion of the article, and that the fastening system has different levels of resistance to disengagement from the engaged configuration in different directions.

Schmidt does not teach or suggest at least this limitation of claim 1. For instance, as noted in the Office Action, Schmidt's tape has one end attached to the article, and another end attached to a backing. Claim 1 states that the tape must be engaged to fasten at least a portion of the article. Once Schmidt's tape is engaged in this manner, no teaching or suggestion exists in Schmidt that the tape would have different levels resistance to disengagement.

Likewise, Vukos fails to teach or suggest this element. Vukos is a design patent, and is cited for disclosing a disposable absorbent article having a surface fastening member that defines a Y-dimension that increases in a direction from a distal edge to a proximal edge. Accordingly, even if Vukos and Schmidt were combined in a manner suggested in the Office Action, the combination would fail to teach or suggest each element of the claimed invention. Specifically, the combination would fail to teach or suggest a fastening system in an engaged configuration to fasten at least a portion of the article, wherein the fastening system has different levels of resistance to disengagement from the engaged configuration in different directions.

Moreover, Applicant suggests that there is no motivation to combine Schmidt and Vukos. The Office Action states that one skilled in the art would be motivated to combine Vukos with Schmidt because Vukos would provide an easier mechanism to grip and open the tab. Applicant respectfully disagrees. In particular, there is no teaching or suggestion by Vukos that the "gripping region" identified in the Office Action is free from the article when the fastener is engaged. If, in fact, if the "gripping region" is attached to the underlying article, it would be no easier to grip and open the tab than Schmidt's rectangular adhesive tape.

The fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.

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MPEP 2143.01, *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Here, the geometry of Vukos provides no advantages over those already obtained in Schmidt, and the prior art provides no other suggestion of the desirability of such a combination.

In response to Applicant's argument in the previous response, the present Office Action states that "the motivation to modify Schmidt comes from three sources: the nature of the problem to be solved, the teaching of the prior art, and the knowledge of persons of ordinary skill in the art." However, this conclusory statement is devoid of support. First, there is no problem identified by Schmidt pertaining to the grippability of the adhesive tape when it is desired to open the tab. Additionally, Vukos provides no teaching or suggestion that the outer portion of the illustrated fastener is used as a gripping region. Finally, the knowledge of one having ordinary skill in the art would not motivate one to believe that the "gripping region" of Vukos would facilitate an easier release of Schmidt's tab because the distal end of Schmidt's tab is shaped similar to Vukos' "gripping region."

Because 1) the combination of Schmidt and Vukos fails to teach or suggest each element of amended claim 1, and 2) no teaching or suggestion exists in either of the references to incorporate the teachings of Vukos in Schmidt, the combination of Schmidt and Vukos does not render claim 1 obvious.

For at least these reasons, claim 1 is patentable over the cited prior art, and withdrawal of the rejection is respectfully requested. Applicant cites the patentability of claim 1 provides sufficient basis for the patentability of corresponding dependent claims 4-5 and 8-15.

With further respect to claims 4-5, the Office Action states that claim 4 is unpatentable over Schmidt and Vukos because Vukos' distal edge is said to be smaller than the proximal edge (see annotated Fig. 1 in Office Action). However, the distal edge and proximal edge are laterally displaced from each other, and can therefore not be equated with the presently claimed edges.

Claim 4 has been amended to remove any ambiguity as to the locations of the recited edges. Namely, the fastening element includes a first edge and a second edge, wherein the first edge is offset from the second edge in the direction of dimension Y. This means that the two edges are offset in a direction of the dimension that increases as recited in claim 1. The proximal and distal edges illustrated in the Office Action are not

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offset in direction claimed. Specifically, the proximal and distal edges are offset in a direction that is perpendicular to the dimension that is said to be increasing in Vukos.

For this additional reason, Applicant asserts that claim 4 is allowable over the cited prior art.

Withdrawal of the rejection of claims 1, 4-5, and 8-10 is therefore respectfully requested.

Rejection Under 35 USC §103(a) Over Schmidt in view of Vukos and Tritsch

Claims 11-15 are rejected under 35 USC §103(a) as being unpatentable over Schmidt in view of Vukos, and further in view of Tritsch. Applicant asserts the patentability of independent claim 1 as providing sufficient basis for the allowability of dependent claims 11-15.

Furthermore, Applicant asserts that 1) Tritsch fails to teach or suggest the invention recited in claims 11-15, and 2) no motivation is present to combine the teachings of Schmidt, Vukos, and Tritsch. Specifically, both Schmidt and Vukos teach away from the teachings of Tritsch.

To begin, Tritsch fails to teach or suggest the element recited in claims 11-14. Claim 11 recites that the fastening system has a first peak peel load value when measured subject to forces in a y'z-plane through y''z plane which is greater than a second peak peel load value when measured subject to forces in a xz plane. The Office Action appears to cite Tritsch because a user can begin removing the fastener out of engagement by pulling a release string (thus providing a first force) and then by grabbing the portion of the tab that has been partially removed (thus providing a second, different force in a different direction).

However, Tritsch does not disclose different peak peel load values as claimed. Rather, Tritsch merely stands for the proposition that a fastener is easier to remove once it has already been partially removed.

With respect to claims 12-15, the prior art nowhere recognizes peak peel load or plane projection angle values as result-effective variables. The fact that they may be dependent upon various sizes of the fastening system or article does not mean that the prior art recognizes the claimed values as result-effective variables. It is the present

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invention, and not the cited prior art, that recognizes the desirability to provide a fastener having peek peel load and plane projection angles suitable to withstand forces experienced during use.

Secondly, no motivation exists to combine Tritsch with Schmidt and Vukos.

Tritsch discloses an adhesive tab permanently attached to the diaper at one end (as in Schmidt), and an opposite end that is tacky and folded over and releasably adhered to a central portion of the tab. A string separator is provided in order to facilitate the release of the opposite end from the central portion. Thus the problem to be solved in Tritsch is the ability to protect an unfastened end of a tab and allowing a user to fasten the unfasten end to secure a diaper about a baby. (See Abstract).

Schmidt addresses this problem in a much easier way – by using an adhesive backing. Schmidt's configuration is less complex than Tritsch's, requires less material because Schmidt does not require that it's disclosed tab wrap around itself, is thus less expensive to manufacture and less bulky, and furthermore does not require any loose elements such as Tritsch's string. One skilled in the art would not be motivated to incorporate Tritsch's teachings into Schmidt.

Likewise, no motivation exists to combine Vukos teachings with Tritsch. Vukos is a design patent that illustrates a diaper that is fastened with an unspecified fastener. Vukos provides no written disclosure, and identifies no problem to be solved by Tritsch's teachings. Nonetheless, the Office Action has characterized Vukos as providing a gripping region to facilitate removal of the adhesive tab. Under this characterization, one having ordinary skill in the art would not substitute Vukos' gripping region with Tritsch's release string that is far more complex to operate. Certainly, one skilled in the art would not provide Vukos' gripping region in combination with Tritsch's release string because the use of Tritsch's release string would cause substantial sheer forces at the stepped distal end of Vukos' fastener. These sheer forces are not present in Vukos because the fastener does not have a stepped distal end proximal the release string.

Moreover, both Vukos and Tritsch cannot simultaneously be combined with Schmidt because to the extent that Vukos and Tritsch would be combined with Schmidt for their mechanisms to facilitate removal of a fastener from an absorbent article, the mechanisms of Vukos and Tritsch conflict. If one having ordinary skill in the art were to modify Schmidt for the purposes of facilitating release of the fastener (a proposition

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which Applicant disputes), the person having ordinary skill in the art would incorporate Vukos or Tritsch, but not both.

Withdrawal of the rejection of claims 11-15 is therefore respectfully requested.

#### New Claims

Applicant has added new claims 16-19.

New dependent claim 16 has been added that depends from claim 1 and recites that the surface fastening system has different levels of resistance to peel mode disengagement in different directions. The Office Action has not provide any prior art reference that discloses a fastening system having different levels of resistance to peel mode disengagement in different directions. Not only is Tritsch not properly combinable with the other cited references, Tritsch does not disclose different levels of resistance in different directions to peel mode disengagement from the engaged configuration. Tritsch's second peel force identified by the Office Action with respect to claim 11 only occurs once disengagement has begun. Accordingly, Tritsch's second level of resistance is not to peel mode disengagement from the engaged configuration, but rather from a partially disengaged configuration.

New independent claim 17 corresponds generally to claim 4 (as previously pending) rewritten in independent form. Claim 17 recites that the first fastening element includes a longitudinally inboard edge and a longitudinally outboard edge, the longitudinally inboard edge being longer than the longitudinally outboard edge. The term's "longitudinally inboard" and "longitudinally outboard" are not open to interpretation in light of the common definition and the knowledge of one having ordinary skill in the art. Furthermore, the present specification describes and illustrates this claim limitation at Page 15, line 5 with reference to Fig. 3: "The surface fastening system 40 includes longitudinally inboard edge Ya and longitudinally outboard edge Yb." It should be noted that this description in combination with Fig. 3 is consistent with the commonly accepted definition of "longitudinally inboard" and "longitudinally outboard." The Office Action cites the proximal and distal edges of Vukos, Fig. 1, as disclosing this claim element (see annotated Fig. 1 in the Office Action). However, the edges in Vukos extend longitudinally, and are laterally offset. Thus, one edge is laterally outboard with respect to the other edge. There is no common meaning that could be used to interpret Vukos' edges as being at all longitudinally offset (and hence one edge being

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longitudinally outboard of the other edge). Accordingly, claim 17 is clearly patentable over the cited prior art.

New claim 18 depends from claim 17 and recites that the surface fastening system has different levels of resistance in different directions to disengagement from the fastened configuration. As discussed above with respect to claim 1, no prior art reference has been cited that teaches or suggests this claim limitation.

New claim 19 depends from claim 17 and recites that the surface fastening system has different levels of resistance to peel mode disengagement in different directions. As discussed above with respect to claim 16, no prior art reference has been cited that teaches or suggests this claim limitation.

Formal allowance of new claims 16-19 is therefore respectfully requested.

#### Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. 102 and 103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of the claims is respectfully requested.

Respectfully submitted,

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